IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 16.10.2017

Appeal No. E/2349-2351/2012-DB

(Arising out of Order-in-Original No. Commissioner/RPR/CEX/33/2012 dated 30.3.2012 passed by the Commissioner , Customs & Central Excise, Raipur)

Pankaj Agrawal Krishna Kumar Gupta, Director Pramod Agarwal, Director	Appellant

Vs.

CCE, Raipur	Respondent

Appearance

Shri Sunil Minocha, Advocate Shri R.N. Sharma, Advocate	-	for the appellant
Shri Ranjan Khanna, D.R.	-	for the respondent

CORAM:**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 57364-57366/2017

Per B. Ravichandran :

These three appeals are against the common impugned order dated 11.4.2012 of Commissioner of Central Excise, Raipur. This case is adjudicated by the original authority who confirmed the recovery of Rs.2,13,55,253/- from M/s Shree Balajee Impex owned by Shri Kailashpati Agrawal. The allegation against the main party is that they have procured the excisable goods without payment of duty with the declared intention of exporting out of country. The case of the Revenue is that such export did not happen and the goods have been diverted in domestic market in violation of condition for duty free procurement. The present three appellants were imposed with the penalty of Rs.2 lakhs each under Rule 26 of Central Excise Rules, 2002 for their role in the illicit transactions of the main party.

2. The ld. Counsel submitted that the appellants did not deal with the goods physically and they had no prior knowledge of the possible diversion and violation of condition of export condition which may make the goods liable for confiscation. As such, he pleaded that the penalties imposed on the appellants under Rule 26 may be set aside.

3. The ld. AR contested the appeals stating that role of each of the appellant has been brought out by clear corroborative evidences which will show that they have knowingly involved in deliberate acts resulting in loss of Govt. revenue and abetted the act of main party in whose names the exports were supposed to have made to Bangladesh. He specifically referred to evidence recorded by the original authority in respect of each one of appellant for their role.

4. We have heard both sides and perused the case records.

5. All the three appellants were imposed with penalty under Rule 26. We have perused the impugned order and the defence submission carefully. The Role of Shri Pankaj Agrawal has been brought out clearly in the impugned order. he was handling the sales of the main party and was closely connected with the business activities to the effect of virtually managing the same. Similarly, the other two appellants, who themselves had a separate unit under their control, Shri Krishna Kumar Gupta and Shri Pramod Agrawal, were the Directors of M/s Ultimate Mercantile Ltd. and it is brought out in the investigation that Shri K.K. Gupta also a Director of M/s Unique Ltd. opened a bank account in his capacity as the Director and also opened a joint account with shri Pramod in the same bank. These two bank accounts were extensively used to transfer the sale proceeds and the illegal gains that accrued by diversion of goods which were originally procured without payment of duty and intended for export, but diverted to domestic market on a profit.

6. On careful consideration of the evidences analysed in the impugned order and the defence submissions, we note that there is no merit in the present appeals against the imposition of penalties. Regarding quantification of penalty , we note that the demand involved is around Rs.2.13 crores whereas penalty of only Rs. 2 lakhs each has been imposed on the appellants for their role. Accordingly,

we find no reason to interfere with the quantum of penalty also. Accordingly, the appeals are dismissed as without merits.

(Dictated & pronounced in open Court)

(Justice Dr. Satish Chandra) | (B. Ravichandran)
President | Member (Technical)

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